

THE URGENCE OF RESTORATIVE JUSTICE IN THE POLICE IN THE SETTLEMENT OF DOMESTIC VIOLENCE CASES (KDRT)

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ABSTRACT;

Efforts to settle criminal cases in Indonesia do not always have to be resolved until the court is in the realm of the court, in this case the Court, until criminal sanctions are imposed. As in the widespread news related to Domestic Violence (KDRT) in Indonesia, this has become a serious concern for law enforcement officials, in this case the police. The police as law enforcement officers have the authority to terminate cases in accordance with applicable regulations, including the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, as well as the Circular Letter of the Chief of Police Number SE/7/VII/2018 concerning Termination of Investigations.

The author is interested in taking the title about the Urgency of Restorative Justice in the Police in Cases of Domestic Violence (KDRT), by formulating problems regarding the urgency of restorative justice in the Police in resolving cases of Domestic Violence (KDRT) and the weakness of the existence of restorative justice in resolving cases of violence in the household (KDRT). The research method that the author uses is the sociological juridical method by conducting direct research in the field and also adding literature books, laws and regulations or relevant references. The purpose of this paper is to find out the urgency of restorative justice in the Police in resolving cases of domestic violence (KDRT) and to find out the weaknesses of the application of restorative justice.

Keywords: *Police Restorative Justice, Domestic Violence Case*

INTRODUCTION

Prior to the enactment of Law number 23 of 2004, the settlement of cases of domestic violence used more *lex generalis* provisions, for example the use of Article 351 paragraph (1) and Article 356 of the 1st Criminal Code. Whereas in theory, domestic violence is not only physical violence, but also psychological violence, sexual violence, and economic violence. So by looking at the existing arrangements in the Criminal Code as *lex generalis*, it cannot solve the problems of psychological violence, sexual violence and economic violence. Law number 23 of 2004 provides sufficient restrictions on movement for perpetrators of

domestic violence. The emergence of several cases of domestic violence (KDRT) in Indonesia, is forms of violence that occur within the scope of a gender-based household that can cause misery and suffering for the victims, most of whom are women, and the perpetrators are men. Domestic Violence (KDRT) is considered a private issue, because it is a If it is private, then domestic violence (KDRT) matters are considered a family secret. The Law on the Elimination of Domestic Violence (KDRT) is a respect for human dignity, its relation to the rights of husband and wife in the household, and the meaning of violence or discrimination against women. The victims who experience the most violence, both physically and sexually, are women and children. In the annual records of Komnas Perempuan in 2021, the number of women victims of violence in 2020 was recorded as 299,911 cases. This figure decreased from 2019 which amounted to 431,471 cases. According to Komnas Perempuan's explanation, this decline cannot be seen as a decrease in actual cases because data collection and complaint services are constrained by the Covid-19 pandemic. Because based on reports from partner institutions, Komnas Perempuan actually shows an increase in cases. The average case in 2019 was 61 cases reported by partner institutions, while in 2020 an increase of 68 cases in each institution. The data on violence in each province is dominated by DKI Jakarta as many as 2,461 cases. Tension and conflict between husband and wife as well as parents and children is a natural thing in a family or household. No household runs without conflict but conflict in the household is not something to be afraid of. Almost all families have experienced it. What is different is how to overcome and resolve this.

Every family has their own way of solving their problems. If the problem is solved in a good and healthy manner, each family member will get a valuable lesson, namely realizing and understanding the feelings, personality and emotional control of each family member so that happiness is realized in the family. Healthy conflict resolution occurs when each family member does not prioritize personal interests, look for the root of the problem and make solutions that are mutually beneficial to family members through good and smooth communication. On the other hand, if the conflict is resolved unhealthy then the conflict will occur more often in the family.

Problem solving is carried out with excessive anger, physical beatings as an outlet for anger, shouts and cursing as well as scary facial expressions. Sometimes there are behaviors such as attacking, coercing, threatening or using physical violence. Such behavior can be said to be an act of domestic violence (KDRT) which is defined as any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household.¹Symptoms of a wife experiencing violence are feeling inferior, anxious, full of fear, sadness, hopelessness, looking older than her age, often having headaches, having trouble sleeping, complaining of pain for which there is no clear cause, tingling, abdominal pain, and behaving aggressively for no apparent reason. If you read the symptoms above, of course you will realize that the most fatal consequences of violence are damaging psychological conditions whose healing time can never be ascertained.²

Problem

From the description of the background above, the formulation of the problem can be formulated as follows:

1. *What is the urgency of restorative justice in the Police in resolving cases of Domestic Violence (KDRT)?*
2. *Are there any weaknesses in the existence of restorative justice in resolving cases of domestic violence (KDRT)?*

Research Methods

1. Types and Nature of Research.

The research is the application of the method that has been determined in the making of this article. The type of research used by the author is a sociological juridical method. This legal research was carried out with the results of direct

¹Elli N Hasbianto, (1996). Domestic violence. Somber Portrait of Women's Life in Marriage, Paper Presented at the National Seminar, p. 36

²Brief utomo, Violence Against Women(jakarta:PT Indo,2009), p.75

research in the field, where the author acted as an expert witness for Restorative Justice efforts in resolving cases of Domestic Violence in the Police as well as reviewing document studies, using various secondary data such as legislation, court decisions, legal theory. . The nature of the research used in this research is descriptive, where the nature of this research reveals the laws and regulations relating to legal theories as the object of research.

2. Sources of Legal Materials Sources of legal materials used in this study consist of:
 - a. Primary legal materials are legal materials that are binding and include statutory regulations related to the issues to be investigated, namely those related to Police Restorative Justice in accordance with Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice and Law Number 23 of 2004 concerning the Elimination of Domestic Violence and the Criminal Code.
 - b. Secondary legal materials are legal materials related to primary legal materials such as Court Decisions, the results of scholarly scientific works, research results related to Restorative Justice.
 - c. Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials such as legal dictionaries, encyclopedias, and so on.
3. Data Collection Techniques The technique of collecting legal materials used in this research is library research, namely through searching laws and regulations, documents and books as well as other scientific works that are in accordance with the object to be studied.
4. Data Analysis A process or effort to process data into new information so that the characteristics of the data become easier to understand and useful for the solution of a problem, especially those related to research.

Discussion

The Urgency of Restorative Justice in the Police for Domestic Violence Cases.

The Indonesian National Police (Polri) is part of the criminal justice system in Indonesia. Where the formal framework of the criminal justice system (criminal justice system) carried out by the Indonesian National Police (Polri) is in the form of a

pre-trial process or stages (pre-trial process). This process starts from an input, which is then processed (process), then produces an output. Enter the case starting from the report submitted to the police and or the case found by the police themselves. The process carried out by the National Police will produce an output, whether it will be completed at the Police or submitted to the District Attorney (JPU) to be submitted to the trial. If the case is submitted to the Public Prosecutor, the output from the Police will be input for the Public Prosecutor.³If the case is submitted to the Public Prosecutor, the output from the Police will be input for the Public Prosecutor. And so on, the process in the criminal justice system continues, until there is an inkraht decision and until the convict finishes serving his sentence and returns to society.⁴The process that tends to prioritize the formal legal system can give birth to several cases that hurt the community's sense of justice, thus giving birth to the idea of

resolving cases with a restorative justice approach that burdens criminals with the awareness of admitting mistakes, apologizing, and returning damage and losses to victims in their original state or at least -at least resembling the original situation, which can fulfill the victim's sense of justice. This idea has been responded to by the Head of the Criminal Investigation Agency (Kabareskrim) of the Indonesian National Police. STR/583/VIII/2012 dated August 8, 2012 concerning the Application of Restorative Justice, the telegram was used as the basis for investigators in resolving criminal cases with restorative justice. Along with further developments appeared Circular Letter of the Chief of the Indonesian National Police (Kapolri) No. 8/VII/2018 dated 27 July 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. "Further developments will be on August 19, 2021, National Police Chief General Drs. Listyo Sigit Prabowo, M.Si. signed the Regulation of the State Police of the Republic of Indonesia Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice, recorded in the State Gazette of the Republic of Indonesia of 2021 Number 947".

Police Regulation No. 8 of 2021 in Article 1 number 3 states that: "Restorative Justice is the settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional

³Jesyliya Hillary Lawalata, et al. Restorative Justice Approaches in the Settlement of Narcotics Crime Cases at the Investigation Stage. *Tatohi Law Journal*, Volume 2 Number 1 March 2022, pp.91-112

⁴I Made Tambir, "The Restorative Justice Approach in the Settlement of Criminal Acts at the Investigation Level," *Udayana Master Law Journal* 8, No. 4 (2019): p. 549-74.

leaders, or stakeholders to jointly seek a just settlement through peace by emphasizing re-election to the original state."⁵

Efforts are being made to take action against perpetrators of domestic violence by providing criminal sanctions. Sanctions for perpetrators of domestic violence have been formulated successively in Article 44 to Article 50 of Law no. 23 of 2004. In the event of domestic violence, the perpetrators who are legally and convincingly proven in court will be subject to the said criminal sanctions. Although it has been firmly determined regarding the sanctions that can be imposed by the judge in court to the perpetrators of domestic violence. However, in practice there have been deviations, namely judges in court proceedings in handling domestic violence cases do not use Law no. 23 of 2004. The main goal of restorative justice itself is the achievement of fairness, especially for all parties involved in it, and not just prioritizing punishment. The implementation of restorative justice in the Criminal Justice System is in line with the 2000 United Nations Declaration on the Basic Principles on the Use of Restorative Justice Programs in Criminal Problems, this is also confirmed by the Vienna Declaration on Crime and Justice. The restorative punishment model was introduced because the current criminal justice and criminal justice system created problems. In the current prison system, the purpose of punishment is deterrence, revenge, and suffering as a consequence of his actions. Sentence indicators are measured by the extent to which inmates (prisoners) are subject to prison regulations. So, the approach is more to security (security approach). In addition to imprisonment that has consequences for the inmate's family,

Moreover, the legal process takes a long time. The settlement of restorative punishment will involve the victim, family and other parties in solving the problem. Restorative justice is an alternative or other way of criminal justice (criminal justice: pen) by prioritizing the integration of perpetrators and victims or the community as a unit to find solutions and return to a pattern of good relations between criminals. Restorative justice emphasizes improving the relationship between the perpetrator and the victim and the community that has been damaged by the crime committed by the perpetrator.⁶

⁵Article 1 Number 3 Police Regulation Number 8 of 2021.

⁶Strong Puji Prayitno, 2012, Restorative Justice for Criminal Justice in Indonesia, Journal of Legal Dynamics Vol. 12, p. 409

Besides, this requires the perpetrators of criminal acts to be responsible for repairing the losses caused by their actions, and its application is not easy. If only applied in the prison environment, the results will not be optimal. So, the restorative model must start from the Police, when the case is first investigated. It is the same in the Prosecutor's Office and the Court. One more thing that is difficult is recovering the suffering of the victim, both physically and psychologically. According to Romli Atmasasmita, related to the problem of crime, violence is often a complement to the form of crime itself. In fact, he has established a distinctive feature in the repertoire of the study of crime. The more symptomatic and widespread the frequency of crimes followed by violence in society, the stronger the public's belief in the importance and seriousness of this kind of crime. Thus, in turn this crime model has formed a distinctive perception among the public. It is no different if we make an analogy with bribery from the lowest level to the most sophisticated level of bribery.

Restorative Justice is a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts as well as alternative punishments such as social work and others. Bagir Manan stated that the substance of Restorative Justice contains the following principles: building joint participation between perpetrators, victims, and community groups in resolving an event or crime; placing the perpetrators, victims, and the community as "Stakeholders" who work together and immediately try to find solutions that are considered fair for all parties (win-win solutions). "

Rufinus Hutauruk stated that "Restorative Justice focuses on the process of direct criminal responsibility from the perpetrator to the victim and the community. If the perpetrator and the victim as well as the community whose rights have been violated feel that justice has been achieved through joint deliberation efforts, it is hoped that the implementation of punishment can be avoided. This shows that the perpetrator is not the main object of the Restorative Justice approach, but a sense of justice and the recovery of the conflict itself which is the main object."⁷

The Restorative Justice process has the following objectives:

1. Take responsibility for the consequences of recording actions and commit to repairs/repairs.

⁷Rufinus Hutahuruk, *Combating Corporate Crime Through a Restorative Approach A Breakthrough of the Law* (Jakarta: Sinar Graphic, 2013), p. 106-107.

2. Steps The victim agrees to engage in a process that can be carried out safely, understanding that their actions have affected the victim and others, to then result in satisfaction.
3. Flexible infringement agreed upon by the parties emphasizing to repair the damage done and as soon as possible also prevent the violation.
4. Offenders make their commitment to repair the damage and do and seek to address the factors of their behavior; and
5. Victims and perpetrators both understand the dynamics that lead to a particular incident obtaining an end result and integration/rejoining the community

The termination of this case is in accordance with applicable rules, including the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, as well as the Circular Letter of the Chief of Police Number SE/2/II/2021 dated February 19, 2021 concerning the Termination of Investigation. To apply restorative justice (RJ), the case must meet a number of requirements required in the two rules. It is stated in the SE that investigators must facilitate mediation between victims and perpetrators as well as parties involved in cases who want to make peace. All cases are prioritized using a restorative justice approach, with the exception of cases that have the potential to be divisive, nuanced by SARA, radicalism, and separatism.⁸ Some of them, do not cause unrest and or rejection from the community, do not result in social conflict, do not have the potential to divide the nation, are not radicalism and separatism. not repeating criminal acts based on court decisions and not criminal acts of terrorism, crimes against state security, criminal acts of corruption and crimes against people's lives, this is stated in Article 5 of the National Police Chief Regulation Number 8 of 2021.

Others, are not radicalism and separatism, and are not repeat offenders based on court decisions. In this case, both parties, the complainant and the reported party, have agreed to make peace and forgive each other. In addition, the complainant has also filed for revocation of the police report. When Investigation in the Police, before the SPDP is sent to the Public Prosecutor.

⁸ <https://kompolnas.go.id/index.php/blog/keadilan-restoratif-ala-polri-saat-penidanaan-jadi-nomor-dua> Accessed October 10, 2022

The formal requirements are met, namely:

1. Letter of request for reconciliation of both parties (rapporteur and reporter);
2. The Declaration of Peace (deed of dading) and the settlement of disputes between the litigants (the reporting party and/or the family of the reporting party, the reported party and/or the reported family, and representatives of community leaders) are known to the investigators;
3. Minutes of additional examination of the litigating parties after the settlement of the case through restorative justice;
4. Recommendation for the title of a special case that approves the settlement of restorative justice (restorative justice);
5. The perpetrator does not object to responsibility, compensation, or is done voluntarily;
6. All criminal acts can be carried out by restorative justice against general crimes that do not cause human victims;

If these conditions have been met, then the category of the case can be submitted to a request for reconciliation to the superior of the Police Investigator.

Obstacles to the Implementation of Restorative Justice in Cases domestic violence

Domestic violence is included in the complaint offense. Perpetrators of domestic violence can only be processed legally if there is a complaint from the victim to the police. This requires the courage of the victims to report to the authorities. Moreover, there is a psychological burden that must be borne by the victim. Even in the investigation process, the police are considered unresponsive. There are still investigators who view domestic violence as a household problem that does not need to be resolved through the criminal justice system.⁹One alternative other than the process in court, the settlement of criminal acts of persecution can be done out of court, namely by means of Restorative Justice.¹⁰In the application of

⁹Nita Savitri, "Domestic Violence (KDRT) and Legal Culture: An Anthropological Review," *Journal of Social Harmony* 2, No. 1, 2007, p. 27

¹⁰Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law & National Law*, Kencana, Jakarta, 2009, p. 8.

Restorative Justice in practice, not all parties who are litigating are willing to conduct deliberations, many of them refuse to conduct deliberations. It is the victim who has the greatest possibility of refusing to hold a deliberation effort. This is an illustration for us that in resolving a criminal case it is not only by making good laws. However, the willingness of both parties to play an active role in resolving disputes between the two parties will be one form of restorative justice efforts. The refusal made by the victim to conduct a deliberation between the two is their consideration of the loss suffered.

The application of Restorative Justice will lead to a shift in the direction of punishment and the purpose of sentencing that is punishing or revenge by taking responsibility for every act committed into a settlement that places more emphasis on efforts to heal/restore to its original state before the occurrence of a crime. To realize a restorative justice in the context of law enforcement in Indonesia, the role of the community is needed which is not only the object of the law itself but also plays an active role in law enforcement.¹¹

It is undeniable that in every criminal act, the victim will experience a loss in the form of material and immaterial losses. Material losses in the form of lost items belonging to the victim. This loss is more economic in nature / has economic value while immaterial losses are psychological / mental. This is related to the mental condition of the victim. If the victim cannot immediately commit the criminal act that befell him, it will cause a mental disorder, which to cure it takes quite a long time.¹²

In addition to material and immaterial losses, victims also experience suffering. Suffering itself is divided into 2 (two) kinds, namely short-term suffering and long-term suffering. Short-term suffering means a suffering that will disappear in a relatively short time. Victims can immediately forget what happened. This is different from long-term suffering. The suffering of the victim will be long and prolonged. Even to the point of disturbing their health and activities. Health is

¹¹Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2000), p. 181.

¹²Moerti Hadiati Soeroso, *Domestic Violence in Juridical-Victimological Perspective*, (Jakarta: Sinar Graphic, 2012, Cet. Third), p. 123.

experienced in the form of physical and psychological.¹³

Another weakness of the community in general is that there is still very little knowledge about a judicial process system and always focuses on only getting to the police but those who run a judicial process system, not only the police, there is the prosecutor's office until the court, and the follow-up of the perpetrators to the agreement that has been made is postponed. The trial of criminal acts that have been carried out in the Indonesian Police Regulation is not regulated more deeply, it should be regulated in detail, including the supervision carried out by the Police in synergy with the local population through the Kelurahan/Village where the victim or perpetrator of domestic violence lives, this is aimed at in order to monitor that the same cases of Domestic Violence (KDRT) do not happen again. In addition, it also provides guidance to perpetrators of domestic violence so that they do not repeat their actions. Similar to the Criminal Code which prioritizes the side of the perpetrator but ignores the rights of the victim or the recovery of suffering borne by the victim, the Indonesian Police Regulation should add additional provisions or explanations regarding restoration of the victim's rights, so that the purpose of restorative justice is more perfect with the presence of the Police to accommodate the rights that should be obtained by victims of domestic violence. The Indonesian National Police Regulation should add additional provisions or explanations regarding the restoration of victims' rights, so that the purpose of restorative justice is more perfect with the Police's steps to accommodate the rights that victims of domestic violence should obtain. The Indonesian National Police Regulation should add additional provisions or explanations regarding the restoration of victims' rights, so that the purpose of restorative justice is more perfect with the Police's steps to accommodate the rights that victims of domestic violence should obtain.

Conclusion

Conclusion

From the description of the discussion above, the following conclusions can be drawn:

1. The existence of Restorative Justice at the Police in resolving cases of Domestic Violence, is a breakthrough in the Police's discretionary efforts in

¹³Ibid, p. 124

order to reduce the number of crimes that enter the Court. In enforcing the law, not all cases must be resolved at the court. The role of the Police as law enforcement officers is also a control where a case can be resolved first at the level of investigation in the Police, one of which is to minimize the imposition of criminal sanctions, where criminal sanctions are the last alternative in resolving criminal cases;

2. In its implementation, the application of restorative justice has weaknesses. This is related to the restoration of the rights of victims of Domestic Violence. In some cases that occur, often domestic violence occurs repeatedly this is because after restorative justice occurs, from the Police there is no clear regulatory basis regarding efforts to supervise with a period of time that should have been stipulated in the legal umbrella which is an explanation and regulation. the police.

Suggestion

1. The police in implementing Restorative Justice in resolving cases of domestic violence should also look at the victim's side and explore further from the side of restoring victims' rights by of course involving witness and victim protection institutions or women's protection activists, because most of the victims of Domestic Violence (KDRT)) are women and children;
2. Additional regulations are needed regarding supervision or control arrangements from the Police against perpetrators of Domestic Violence (KDRT) so that there is an effort to prevent the recurrence of their actions.

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